

New Chapter 46A	Current Chapter 46	Staff Notes
Article 1.  General Provisions.  § 46A-1. Partition is a special proceeding.  A partition of property under this Chapter is a special proceeding, and, except as modified in this Chapter, its procedure is provided in Subchapter XII of Chapter 1 of the General Statutes.	§ 46-1. Partition is a special proceeding.  Partition under this Chapter shall be by special proceeding, and the procedure shall be the same in all respects as prescribed by law in special proceedings, except as modified herein.	The Commission approved this section in an earlier draft.
	G.S. 46-2 is compared to G.S. 46A-20 below.	
§ 46A-2. Summons; notice included in petition.  (a) In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.  (b) The petition shall include written notice in a manner reasonably calculated to make the respondent aware of the following:  (1) That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.  (2) That pursuant to G.S. 46A-3, the court may order reasonable attorneys' fees to be paid as a part of the costs of the proceeding.	§ 46-2.1. Summons.  (a) In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.  (b) Written notice shall be included in the petition in a manner reasonably calculated to make the respondent aware of the following:  (1) That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.  (2) That pursuant to G.S. 6-21 the court has the authority, in its discretion, to order reasonable attorneys' fees to be paid as a part of the costs of	The Commission approved this section in an earlier draft.

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	the proceeding.	
<p><b>§ 46A-3. Attorneys' fees.</b></p> <p>(a) In proceedings to partition property under this Chapter, the court shall allocate among all the cotenants of the property those reasonable attorneys' fees incurred for the common benefit of all the cotenants, unless a cotenant shows by clear and convincing evidence that doing so would be inequitable. The allocation shall be according to each cotenant's interest in the property.</p> <p>(b) The attorneys' fees described in subsection (a) of this section do not include attorneys' fees incurred in disputing which method of partition the court should order. Reasonable attorneys' fees incurred by a cotenant in disputing the method of partition shall be allocated by the court among those cotenants determined by the court to be aligned with the cotenant on that issue. The allocation shall be according to each aligned cotenant's interest in the property relative to the total interest of all the aligned cotenants in the property.</p>	None	The Commission approved this section in an earlier draft.

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<p>Article 2.</p> <p>Partition of Real Property.</p> <p>Part 1.</p> <p>General Provisions.</p> <p><b>§ 46A-20. Venue in partition.</b></p> <p>A proceeding to partition real property shall be commenced in the county where the property is located. If the property, whether consisting of one or more tracts, is located in more than one county, the proceeding may be commenced in any of the counties where any part of the property is located; in this case, the petitioner shall file a notice of lis pendens in each of the other counties.</p>	<p><b>§ 46-2. Venue in partition.</b></p> <p>The proceeding for partition, actual or by sale, must be instituted in the county where the land or some part thereof lies. If the land to be partitioned consists of one tract lying in more than one county, or consists of several tracts lying in different counties, proceedings may be instituted in either of the counties in which a part of the land is situated, and the court of such county wherein the proceedings for partition are first brought shall have jurisdiction to proceed to a final disposition of said proceedings, to the same extent as if all of said land was situate in the county where the proceedings were instituted.</p>	<p>The Commission approved this section in an earlier draft.</p>
<p><b>§ 46A-21. Petition by cotenant or personal representative of cotenant; necessary and proper parties; no requirement to serve or join spouses of cotenants.</b></p> <p>(a) Any person claiming real property as a tenant in common or joint tenant may petition to partition the property in superior court. The personal representative of a deceased tenant in common or deceased joint tenant may also petition to partition the</p>	<p><b>§ 46-3. Petition by cotenant or personal representative of cotenant.</b></p> <p>One or more persons claiming real estate as joint tenants or tenants in common or the personal representative of a decedent joint tenant, or tenant in common, when sale of such decedent's real property to make assets is alleged and shown as required by G.S. 28A-17-3, may have partition by petition to the superior court.</p>	<p>The Commission approved this section in an earlier draft.</p>

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<p>property as provided in G.S. 28A-17-3 as part of a petition to sell the deceased cotenant's interest for the payment of debts and other claims against the decedent's estate under Article 17 of Chapter 28A of the General Statutes.</p> <p>(b) The petitioner shall serve and join all tenants in common and joint tenants of the property. The petitioner may serve and join any other person with an interest in the property and any holder of a lien, mortgage, or deed of trust on the property.</p> <p>(c) The petitioner is not required to serve or join spouses of cotenants of the real property unless the spouse is also a cotenant. The surviving spouse of a deceased cotenant is not entitled to a life estate in real property under G.S. 29-30 if the cotenant's interest in the real property was transferred in a partition proceeding initiated under this Chapter to another person before the cotenant's death.</p>		<p>Holders of judgment liens on real property are proper, but not necessary, parties to a partition proceeding. <i>Washburn v. Washburn</i>, 234 N.C. 370, 67 S.E.2d 264 (1951).</p>
	<p><b>G.S. 46-3.1</b> is compared to G.S. 46A-26 below.</p> <p><b>G.S. 46-4</b> is compared to G.S. 46A-24 below.</p> <p><b>G.S. 46-5</b> is compared to G.S. 46A-23 below.</p> <p><b>G.S. 46-6</b> is compared to G.S. 46A-25 below.</p> <p><b>G.S. 46-7</b>, et seq., are compared to G.S. 46A-50, et seq., below.</p>	

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<p><b>§ 46A-22. Effect of judgments partitioning real property subject to a contingent future interest.</b></p> <p>Where real property is subject to a contingent future interest, any judgment partitioning the property is valid and binding upon all persons having an interest in the property, whether or not in being, if all of the following requirements are met:</p> <p>(1) The following persons are parties:</p> <p>a. All persons with a present or vested future interest.</p> <p>b. All persons in being with a contingent future interest that would have a present interest if the contingency had occurred at the time the proceeding was commenced.</p> <p>(2) The following persons are represented by a guardian ad litem appointed under G.S. 1A-1, Rule 17:</p> <p>a. Unborn individuals with an interest.</p> <p>b. Persons not in being with an interest.</p>	<p><b>§ 46-14. Judgments in partition of remainders binding on parties thereto.</b></p> <p>Where land is conveyed by deed, or devised by will, upon contingent remainder, executory devise, or other limitation, any judgment of partition rendered in an action or special proceeding in the superior court authorizing a division or partition of said lands, and to which the life tenant or tenants, and all other persons then in being, or not in being, take such land as if the contingency had then happened, are parties, and those unborn being duly represented by guardian ad litem, such judgment of partition authorizing division or partition of said lands among the respective tenants and remaindermen or executory devisees, will be valid and binding upon all parties thereto and upon all other persons not then in being.</p>	<p>Ask Trusts Drafting Committee about this section.</p> <p>Prospective applicability provision specific to this section?</p> <p>G.S. 41-5 (Unborn infant may take by deed or writing) provides:</p> <p>"An infant unborn, but in esse, shall be deemed a person capable of taking by deed or other writing any estate whatever in the same manner as if he were born."</p> <p><i>See Barnes v. Dortch</i>, 245 N.C. 369, 95 S.E.2d 872 (1957).</p>
<p><b>§ 46A-23. Petition by judgment creditor of cotenant.</b></p> <p>(a) If a judgment debtor has a personal liability on a judgment docketed in the superior court of a county where the judgment debtor owns real property as a tenant in common or joint tenant, the judgment creditor may petition for an actual partition of the</p>	<p><b>§ 46-5. Petition by judgment creditor of cotenant; assignment of homestead.</b></p> <p>When any person owns a judgment duly docketed in the superior court of a county wherein the judgment debtor owns an undivided interest in fee in land as a tenant in common, or joint tenant, and the judgment creditor desires to lay off the homestead of</p>	<p>We need to ask interested groups about whether actual partition only.</p> <p>A cotenant may claim a homestead in real property.</p> <p><i>Kelly v. McLeod</i>,</p>

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<p>property. If the court apportions a share of the property to the judgment debtor, the judgment creditor may seek to execute the judgment against the judgment debtor's share by (i) setting aside the judgment debtor's homestead in the share, as determined according to Article X of the North Carolina Constitution and Article 16 of Chapter 1C of the General Statutes, and (ii) selling the remaining part of the share.</p> <p>(b) The remedy provided in this section does not deprive [(i)] a judgment creditor of any other remedy in law or equity to enforce a judgment lien, [(ii) a judgment debtor of the homestead protections of Article X of the North Carolina Constitution and the exempt property protections of Article 16 of Chapter 1C of the General Statutes, or (iii) a cotenant of the cotenant's right to seek a partition sale of real property under G.S. 46A-28.]</p>	<p>the judgment debtor in the land and sell the excess, if any, to satisfy his judgment, the judgment creditor may institute before the clerk of the court of the county wherein the land lies a special proceeding for partition of the land between the tenants in common, making the judgment debtor, the other tenants in common and all other interested persons parties to the proceeding by summons. The proceeding shall then be in all other respects conducted as other special proceedings for the partition of land between tenants in common. Upon the actual partition of the land the judgment creditor may sue out execution on his judgment, as allowed by law, and have the homestead of the judgment debtor allotted to him and sell the excess, as in other cases where the homestead is allotted under execution. The remedy provided for in this section shall not deprive the judgment creditor of any other remedy in law or in equity which he may have for the enforcement of his judgment lien.</p>	<p>165 N.C. 382, 81 S.E. 455 (1914).</p>
<p><b>§ 46A-24. Surface and minerals in separate owners; partitions distinct.</b></p> <p>When title to the mineral interests in real property has been separated in ownership from the title to the surface of the property, a tenant in common or joint tenant of the mineral interests may partition the mineral interests, distinct from the surface, without joining the owner of the surface. Similarly, a tenant in common or joint tenant of the surface of the property may partition the surface, distinct from the mineral interests, without</p>	<p><b>§ 46-4. Surface and minerals in separate owners; partitions distinct.</b></p> <p>When the title to the mineral interests in any land has become separated from the surface in ownership, the tenants in common or joint tenants of such mineral interests may have partition of the same, distinct from the surface, and without joining as parties the owner or owners of the surface; and the tenants in common or joint tenants of the surface may have partition of the same, in manner provided by law, distinct from the mineral interest</p>	<p>The Commission approved this section in an earlier draft.</p>

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joining the owner of the mineral interests. An owner of the mineral interests is not required to join a partition of the surface of the property, and an owner of the surface of the property is not required to join a partition of the mineral interests. The rights of either owner shall not be prejudiced by a partition of the other interests.	and without joining as parties the owner or owners of the mineral interest. In all instances where the mineral interests and surface interest have thus become separated in ownership, the owner or owners of the mineral interests shall not be compelled to join in a partition of the surface interests, nor shall the owner or owners of the surface interest be compelled to join in a partition of the mineral interest, nor shall the rights of either owner be prejudiced by a partition of the other interests.	
	<b>G.S. 46-5</b> is compared to G.S. 46A-23 above.	
<p><b>§ 46A-25. Unknown or unlocatable parties; summons, notice, and representation.</b></p> <p>(a) If, upon the filing of the petition, the petitioner shows by affidavit or otherwise that the petitioner cannot after due diligence ascertain the name or location of a person with an interest in the real property to be partitioned, the court shall authorize service by publication under G.S. 1A-1, Rule 4. The notice by publication shall include a description of the property that includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.</p> <p>(b) Before or after the notice by publication, the court shall appoint a guardian ad litem under G.S. 1A-1, Rule 17, to represent any person that has an interest in the property, is unknown or unlocatable, and fails to appear.</p>	<p><b>§ 46-6. Unknown or unlocatable parties; summons, notice, and representation.</b></p> <p>(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.</p> <p>(b) Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall appoint some</p>	<p>The Commission approved this section in an earlier draft.</p>

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	disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented.	
<p><b>§ 46A-26. Court's authority to make orders pending final determination of proceeding; notice and hearing.</b></p> <p>(a) Before final determination of a proceeding to partition real property, on application of any of the parties, the court may make any orders that it finds to be in the best interest of the parties, including but not limited to orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, the appointment of receivers pursuant to G.S. 1-502(6), and access to the property for the purpose of inspecting, surveying, appraising, or selling the property.</p> <p>(b) A party making an application under subsection (a) of this section shall serve a copy of the application on all other parties. The court shall schedule a hearing on the application, if, within 10 days of being served, a party files a response in opposition to the application or requests a hearing.</p>	<p><b>§ 46-3.1. Court's authority to make orders pending final determination of proceeding.</b></p> <p>Pending final determination of the proceeding, on application of any of the parties in a proceeding to partition land, the court may make such orders as it considers to be in the best interest of the parties, including but not limited to orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, and to include the appointment of receivers pursuant to G.S. 1-502(6).</p>	<p>The Commission approved this section in an earlier draft.</p>
	<p><b>G.S. 46-4</b> is compared to G.S. 46A-24 above.</p> <p><b>G.S. 46-5</b> is compared to G.S. 46A-23 above.</p> <p><b>G.S. 46-6</b> is compared to G.S. 46A-25 above.</p> <p><b>G.S. 46-7</b>, et seq., are compared to G.S. 46A-50, et seq., below.</p>	

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<p>§ 46A-27. Carrying costs, including property taxes; improvements; right to contribution.</p> <p>(a) Right to Contribution. – At any time during a real property partition proceeding, a cotenant may on application assert the cotenant's right to contribution provided in this section. A cotenant has a right to contribution from the other cotenants for the cotenant's payment of the real property's carrying costs and for the lesser of the following:</p> <p>(1) The value added to the real property by the cotenant's improvements as of the date of the commencement of the proceeding.</p> <p>(2) The actual costs of the cotenant's improvements.</p> <p>(b) Property Taxes. – A cotenant's right to contribution for property taxes under this section is limited to the amount of property taxes paid by the cotenant during the 10 years preceding the filing of the partition petition, plus interest at the legal rate under G.S. 24-1.</p> <p>(c) Scope. – Nothing in this section affects the rights of cotenants outside a real property partition proceeding initiated under this Chapter.</p> <p>(d) Carrying Costs Defined. – For purposes of this section, "carrying costs" means the actual costs of preserving the value of and the cotenants' interests in the real property,</p>	None	<p>The Commission approved this section in an earlier draft.</p>

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including property taxes, homeowner's insurance, repairs, and payments for a loan to acquire the real property.		
<p><b>§ 46A-28. Sale in lieu of partition.</b></p> <p>(a) Subject to G.S. 46A-76(b), the court shall order a sale of the real property described in the petition, or of any part of the property, under Part 3 of this Article only if it finds by a preponderance of the evidence that an actual partition of the property pursuant to Part 2 of this Article cannot be made without substantial injury to any of the parties, after having considered evidence in favor of actual partition and evidence in favor of a sale presented by any of the parties.</p> <p>(b) In determining whether an actual partition would cause substantial injury to any of the parties, the court shall consider all of the following:</p> <p>(1) Whether the fair market value of each cotenant's share in an actual partition of the property would be materially less than the amount each cotenant would receive from the sale of the whole.</p> <p>(2) Whether an actual partition would result in material impairment of any cotenant's rights.</p>	<p><b>§ 46-22. Sale in lieu of partition.</b></p> <p>(a) Subject to G.S. 46-22.1(b), the court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested parties, after having considered evidence in favor of actual partition and evidence in favor of a sale presented by any of the interested parties.</p> <p>(b) In determining whether an actual partition would cause "substantial injury" to any of the interested parties, the court shall consider the following:</p> <p>(1) Whether the fair market value of each cotenant's share in an actual partition of the property would be materially less than the amount each cotenant would receive from the sale of the whole.</p> <p>(2) Whether an actual partition would result in material impairment of any cotenant's rights.</p> <p>(b1) The court, in its discretion, shall consider the remedy of owelty where such remedy can aid in making an actual partition occur without substantial injury to the parties.</p>	

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<p>(c) The court shall consider whether charging owelty under G.S. 46A-51 would eliminate or mitigate any substantial injury to any of the parties caused by an actual partition. [The court has discretion in making this determination.]</p> <p>(d) If the court orders a partition sale, the court shall make specific findings of fact and conclusions of law supporting the order.</p> <p>(e) The party seeking a sale of the property has the burden of proving substantial injury under this section.</p>	<p>(c) The court shall make specific findings of fact and conclusions of law supporting an order of sale of the property.</p> <p>(d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section.</p>	<p>Subsection (b1) "requires a court to consider owelty." <i>Solesbee v. Brown</i>, ___ N.C. App. ___, ___, 805 S.E.2d 183, 190 (2017).</p> <p>"Whether a partition order and sale should issue is within the sole province and discretion of the trial judge and such determination will not be disturbed absent some error of law." <i>Id.</i> at ___, 805 S.E.2d at 186-87 (citation, quotation marks, and brackets omitted).</p> <p>The Commission approved this section in an earlier draft.</p>
<p><b>§ 46A-29. Partition of part of the real property.</b></p> <p>In a partition proceeding under this Chapter, the court may order the actual partition of part of the real property and order that the remaining part of the property be sold in a partition sale or held in cotenancy.</p>	<p><b>§ 46-16. Partial partition; balance sold or left in common.</b></p> <p>In all proceedings under this Chapter actual partition may be made of a part of the land sought to be partitioned and a sale of the remainder; or a part only of any land held by tenants in common, or joint tenants, may be partitioned and the remainder held in cotenancy.</p>	

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<p>Part 2.</p> <p>Actual Partition.</p> <p><b>§ 46A-50. Commissioners appointed; compensation; oath; delay or neglect.</b></p> <p>(a) Appointment. – The superior court shall appoint three disinterested commissioners to apportion the real property to be partitioned among the cotenants. If the property to be partitioned is located in more than one county, the court may appoint additional commissioners if necessary from counties where the property is located other than the county where the proceeding is commenced.</p> <p>(b) Compensation. – The clerk of the superior court shall fix the compensation of commissioners for the partition of real property according to G.S. 1-408.</p> <p>(c) Oath. – The commissioners shall be sworn according to Chapter 11 of the General Statutes.</p> <p>(d) Delay or Neglect. – If, after accepting the commission, any of the commissioners unreasonably delays or neglects to perform his or her duties as a commissioner, the court may do any of the following:</p> <p>(1) Find the commissioner in civil contempt.</p> <p>(2) Remove the commissioner.</p> <p>(3) Assess a civil penalty of fifty dollars (\$50.00), to be remitted to the</p>	<p><b>§ 46-7. Commissioners appointed.</b></p> <p>The superior court shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common, or joint tenants. Provided, in cases where the land to be partitioned lies in more than one county, then the court may appoint such additional commissioners as it may deem necessary from counties where the land lies other than the county where the proceedings are instituted.</p> <p><b>§ 46-7.1. Compensation of commissioners.</b></p> <p>The clerk of the superior court shall fix the compensation of commissioners for the partition or division of lands according to the provisions of G.S. 1-408.</p> <p><b>§ 46-8. Oath of commissioners.</b></p> <p>The commissioners shall be sworn by a magistrate, the sheriff or any deputy sheriff of the county, or any other person authorized to administer oaths, to do justice among the tenants in common in respect to such partition, according to their best skill and ability.</p> <p><b>§ 46-9. Delay or neglect of commissioner penalized.</b></p>	<p>The Commission approved this section in an earlier draft.</p>

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Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.	If, after accepting the trust, any of the commissioners unreasonably delay or neglect to execute the same, every such delinquent commissioner shall be liable for contempt and may be removed, and shall be further liable to a penalty of fifty dollars (\$50.00), to be recovered by the petitioner.	
<p><b>§ 46A-51. Commissioners to inspect and partition real property; apportioning shares; charging owelty on more valuable shares.</b></p> <p>(a) Apportioning Shares; Charging Owelty on Shares. – The commissioners together shall inspect the real property and partition it among the cotenants by apportioning it into shares proportionate in value as nearly as possible to the cotenants' interests in the property. To the extent the commissioners find it necessary to make an equitable partition, they may apportion the property into shares of unequal value and charge the more valuable shares with sums of money necessary to make up the difference in value, to be paid to the shares of inferior value.</p> <p>(b) Interest on Owelty. – Owelty charged under subsection (a) of this section shall bear interest at the legal rate under G.S. 24-1 until paid.</p> <p>(c) Minor's Share. – If a share charged with owelty is apportioned to a minor, the money shall not be payable until the minor reaches the age of 18 years. If the minor has a guardian of the estate [or general guardian], however, the guardian shall pay the money</p>	<p><b>§ 46-10. Commissioners to meet and make partition; equalizing shares.</b></p> <p>The commissioners, who shall be summoned by the sheriff, must meet on the premises and partition the same among the tenants in common, or joint tenants, according to their respective rights and interests therein, by dividing the land into equal shares in point of value as nearly as possible, and for this purpose they are empowered to subdivide the more valuable tracts as they may deem best, and to charge the more valuable dividends with such sums of money as they may think necessary, to be paid to the dividends of inferior value, in order to make an equitable partition.</p> <p><b>§ 46-11. Owelty to bear interest.</b></p> <p>The sums of money due from the more valuable dividends shall bear interest until paid.</p> <p><b>§ 46-12. Owelty from infant's share due at majority.</b></p> <p>When a minor to whom a more valuable dividend shall fall is charged with the payment of any sum, the money shall not be payable until such minor arrives at the age of 18</p>	<p>Some of the amendments in this section are taken from the Partition of Property Third Draft (DN 13-2 Partition of Property).</p> <p>"Owelty refers to the ability of a court to order that a cotenant who receives a portion of the land which has a greater value than his proportionate share of the property's total value, to pay his former cotenants money to equalize the value received by each cotenant." <i>Solesbee v. Brown</i>, __ N.C. App. __, __, 805 S.E.2d 183, 190 (2017) (citation and quotation marks omitted).</p> <p>Specify "or general guardian"?</p>

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when the guardian receives assets belonging to the minor, other than the share, that may be used for that purpose. If the guardian fails to comply with this subsection, the guardian shall be liable for any interest that accrued due to the failure.	years, but the general guardian, if there be one, must pay such sum whenever assets shall come into his hands, and in case the general guardian has assets which he did not so apply, he shall pay out of his own proper estate any interest that may have accrued in consequence of such failure.	
<p><b>§ 46A-52. Partition where cotenants unknown or title disputed.</b></p> <p>(a) If there are any cotenants whose names are not known or whose title is in dispute, the shares of those cotenants shall be apportioned together as one parcel.</p> <p>(b) In any partition proceeding, if two or more cotenants appear as respondents claiming the same particular undivided interest in the real property to be partitioned, or if any part of the undivided interest claimed by the petitioner is disputed by any respondent, it shall not be necessary to decide on their respective claims before the court orders an actual partition or partition sale of the property. The controversy between the contesting parties may be afterwards decided either in the same or an independent proceeding.</p>	<p><b>§ 46-13. Partition where shareowners unknown or title disputed; allotment of shares in common.</b></p> <p>If there are any of the tenants in common, or joint tenants, whose names are not known or whose title is in dispute, the share or shares of such persons shall be set off together as one parcel. If, in any partition proceeding, two or more appear as defendants claiming the same share of the premises to be divided, or if any part of the share claimed by the petitioner is disputed by any defendant or defendants, it shall not be necessary to decide on their respective claims before the court shall order the partition or sale to be made, but the partition or sale shall be made, and the controversy between the contesting parties may be afterwards decided either in the same or an independent proceeding. If two or more tenants in common, or joint tenants, by petition or answer, request it, the commissioners may, by order of the court, allot their several shares to them in common, as one parcel, provided such division shall not be injurious or detrimental to any cotenant or joint tenant.</p>	<p>The Commission approved this section in an earlier draft.</p> <p>G.S. 46-13 is split into G.S. 46A-52 and G.S. 46A-53.</p>

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<p><b>§ 46A-53. Apportionment of shares in common.</b></p> <p>If two or more cotenants by petition or answer request it, the commissioners may, by order of the court, apportion their several shares to them in common, as one parcel, so long as the apportionment is not injurious or detrimental to any cotenant.</p>		<p>The Commission approved this section in an earlier draft.</p> <p>G.S. 46-13 is split into G.S. 46A-52 and G.S. 46A-53.</p>
	<p><b>G.S. 46-14</b> is compared to G.S. 46A-22 above.</p> <p><b>G.S. 46-15</b> was repealed by Session Laws 1959, c. 879, s. 14.</p> <p><b>G.S. 46-16</b> is compared to G.S. 46A-29 above.</p>	
<p><b>§ 46A-54. Report of commissioners; contents; filing; extension; map.</b></p> <p>(a) Report. – The commissioners shall file a report of their proceedings in the office of the clerk of superior court within 90 days after the last commissioner receives a notice of appointment. The report shall be signed by at least two commissioners and shall describe particularly the real property or parcels of real property apportioned, and the share apportioned to each cotenant in severalty, with the sum or sums charged on the more valuable shares to be paid to the shares of inferior value. The clerk of the superior court may, for good cause shown, extend the time for filing the report for an additional period not exceeding 60 days.</p> <p>(b) Map. – The commissioners may employ the county surveyor or, if the county surveyor is absent or not disinterested, some other surveyor, to prepare a map of the real</p>	<p><b>§ 46-17. Report of commissioners; contents; filing.</b></p> <p>The commissioners, within a reasonable time, not exceeding 90 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, <b>in the clerk's discretion</b>, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property.</p>	<p>Some of the amendments in this section are taken from the Partition of Property Third Draft (DN 13-2 Partition of Property).</p>

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<p>property showing the quantity, courses, and distances of each share. The map shall accompany and form a part of the report of the commissioners.</p>	<p><b>§ 46-18. Map embodying survey to accompany report.</b></p> <p>The commissioners are authorized to employ the county surveyor or, in his absence or if he be connected with the parties, some other surveyor, who shall make out a map of the premises showing the quantity, courses and distances of each share, which map shall accompany and form a part of the report of the commissioners.</p>	
<p><b>§ 46A-55. Dedication of streets.</b></p> <p>Upon motion of any party or the commissioners, the clerk may authorize the commissioners to propose in their report the dedication of portions of the real property that are necessary as a means of access to any share or that are otherwise advisable for public or private highways, streets, or alleys. The court shall consider the proposal as a part of the report and, if approved by the court, it shall constitute a dedication. Only a dedication approved by a judge of the superior court affects the interest of a minor or other person under disability.</p>	<p><b>§ 46-17.1. Dedication of streets.</b></p> <p>Upon motion of any party or the commissioners appointed to make division, the clerk may authorize the commissioners to propose and report the dedication of such portions of the land as are necessary as a means of access to any share, or is otherwise advisable for public or private highways, streets or alleys, and such proposal shall be acted upon by the clerk as a part of the report and, if approved, shall constitute a dedication. No interest of a minor or other person under disability shall be affected thereby until such dedication is approved by a judge of the superior court.</p>	
<p><b>§ 46A-56. Confirmation and impeachment of report; appeal.</b></p> <p>(a) If no exception to the report of the commissioners is filed within 10 days, the report shall be confirmed.</p>	<p><b>§ 46-19. Confirmation and impeachment of report.</b></p> <p>(a) If no exception to the report of the commissioners is filed within 10 days, the same shall be confirmed. Any party after confirmation may impeach the proceedings and</p>	

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<p>(b) If an exception to the report of commissioners is filed, the clerk shall do one of the following:</p> <p>(1) Confirm the report.</p> <p>(2) Recommit the report for correction or further consideration.</p> <p>(3) Vacate the report and direct a reappraisal by the same commissioners.</p> <p>(4) Vacate the report, discharge the commissioners, and appoint new commissioners to view the real property and partition it.</p> <p>(c) Appeal from the clerk to superior court of an order of confirmation of the report of commissioners is governed by G.S. 1-301.2 except that the judge may take only the actions specified in subsection (b) of this section and may not adjudge a partition of the property different from that made by the commissioners.</p> <p>(d) After confirmation of the report, any party may impeach the proceedings and decrees for mistake, fraud, or collusion by a <b>motion</b> in the cause. Impeachment, however, does not affect an innocent purchaser for full value and without notice.</p>	<p>decrees for mistake, fraud or collusion by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby.</p> <p>(b) If an exception to the report of commissioners is filed, the clerk shall do one of the following:</p> <p>(1) Confirm the report;</p> <p>(2) Recommit the report for correction or further consideration;</p> <p>(3) Vacate the report and direct a reappraisal by the same commissioners;</p> <p>or</p> <p>(4) Vacate the report, discharge the commissioners, and appoint new commissioners to view the premises and make a partition of them.</p> <p>(c) Appeal from the clerk to superior court of an order of confirmation of the report of commissioners is governed by G.S. 1-301.2 except that the judge may take only the actions specified in subsection (b) of this section and may not adjudge a partition of the land different from that made by the commissioners.</p>	
<p><b>§ 46A-57. Report and confirmation enrolled and registered; effect; probate.</b></p> <p>The report of the commissioners and the decree of confirmation shall be enrolled and certified to the register of deeds and registered in the office of each county where the real property is located. The confirmed report shall be binding among and between the parties</p>	<p><b>§ 46-20. Report and confirmation enrolled and registered; effect; probate.</b></p> <p>Such report, <b>when confirmed,</b> together with the decree of confirmation, shall be enrolled and certified to the register of deeds and registered in the office of the county where such real estate is situated, and shall be binding among and between the claimants, their heirs</p>	

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and the parties' heirs and assigns. It is not necessary for the clerk of court to probate the certified papers required to be registered by this section.	and assigns. It shall not be necessary for the clerk of court to probate the certified papers required to be registered by this section.	
<p><b>§ 46A-58. Clerk to docket owelty.</b></p> <p>If the court orders owelty, the clerk shall enter on the judgment docket the owelty in the same manner as judgments are entered on the docket. The clerk shall mark as plaintiffs on the judgment docket persons whose shares are to be paid owelty, and the clerk shall mark as defendants on the judgment docket persons whose shares are charged with owelty. The entry on the docket shall contain the title of the special proceeding in which the property was partitioned and shall refer to the <b>book and page</b> in which the special proceeding is recorded. When owelty is paid, the entry upon the judgment docket shall be marked satisfied in the same manner as judgments are cancelled and marked satisfied, and the clerk shall be entitled to the same fees for entering this judgment as the clerk is entitled to for docketing other judgments. The docketing of owelty under this section does not release the property from the owelty. Any judgment docketed under this section is not a lien on any property other than the property charged with owelty.</p>	<p><b>§ 46-21. Clerk to docket owelty charges; no release of land and no lien.</b></p> <p>In case owelty of partition is charged in favor of certain parts of said land and against certain other parts, the clerk shall enter on the judgment docket the said owelty charges in like manner as judgments are entered on said docket, persons to whom parts are allotted in favor of which owelty is charged being marked plaintiffs on the judgment docket, and persons to whom parts are allotted against which owelty is charged being marked defendants on said docket; said entry on said docket shall contain the title of the special proceeding in which the land was partitioned, and shall refer to the book and page in which the said special proceeding is recorded; when said owelty charges are paid said entry upon the judgment docket shall be marked satisfied in like manner as judgments are cancelled and marked satisfied; and the clerk shall be entitled to the same fees for entering such judgment of owelty as he is entitled to for docketing other judgments: Provided, that the docketing of said owelty charges as hereinbefore set out shall not have the effect of releasing the land from the owelty charged in said special proceeding: Provided, any judgment docketed under this section shall not be a lien on any property whatever, except that upon which said owelty is made a specific charge.</p>	

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<p><b>§ 46A-59. Order for possession.</b></p> <p>(a) An order for possession of real property <b>apportioned</b> pursuant to this <b>Part</b>, in favor of the party to which an <b>apportionment</b> has been made and against any party in possession at the time of application therefor, may be issued by the clerk of the superior court if all of the following apply:</p> <p>(1) No appeal from the order of confirmation of the report of commissioners has been made within the time prescribed under G.S. 1-301.2, or if an appeal has been made, the judge confirmed the report pursuant to G.S. 46A-56(c).</p> <p>(2) The report and confirmation have been duly recorded in the office of the register of deeds pursuant to G.S. 46A-57.</p> <p>(3) Ten days' notice has been given by the party applying for the order for possession to the party or parties who remain in possession at the time application is made. The notice shall not be given until the clerk has confirmed the report of the commissioners pursuant to G.S. 46A-56.</p> <p>(b) An order for possession issued pursuant to this section shall be directed to the sheriff and shall authorize the sheriff to remove all occupants and their personal property from the real property and to put the party to which an <b>apportionment</b> has been made in</p>	<p>None</p>	<p>This draft deviates from the Orders for Poss. in Real Property Partitions First Draft, approved by the Commission, by (i) using the term "apportioned" to be consistent throughout the Chapter when referencing actual partitions and (ii) by referencing "this Part" since this Part consists of the statutes on actual partition.</p>

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<p>possession. The order shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2. The party to which an apportionment has been made has the same rights and remedies in connection with the execution of an order for possession and the disposition of personal property following execution as are provided to a landlord under State law, including Chapters 42 and 44A of the General Statutes.</p>		
	<p>G.S. 46-22 is compared to G.S. 46A-28 above.</p> <p>G.S. 46-22.1, et seq., is compared to G.S. 46A-76, et seq., below.</p>	
<p>Part 3.</p> <p>Partition Sale.</p> <p>§ 46A-75. Sale procedure.</p> <p>(a) The procedure for a partition sale is the same as is provided in Article 29A of Chapter 1 of the General Statutes, except as provided in this section.</p> <p>(b) In a partition sale, the court is not required to appoint more than one commissioner.</p> <p>(c) If the court orders a public sale, the commissioner shall certify to the court that at least 20 days prior to sale, a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by</p>	<p>§ 46-28. Sale procedure.</p> <p>(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General Statutes, except as provided herein.</p> <p>(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was</p>	<p>This draft deviates from the Partition Sale/Clarify Number of Comm'rs Second Draft, approved by the Commission, by making the highlighted changes: (i) clarifying that the requirements of subsection (b) apply only to a public sale and not a private sale, (ii) transferring the last sentence of G.S. 46-28(b) to G.S. 46A-82(f), (iii) using the term "allocating" to distinguish the term from an actual partition, (iv) making a</p>

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<p>personal delivery, by registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2). The commissioner shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46A-82(f), a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioner that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section satisfies the certification requirement and shall also be deemed prima facie true.</p> <p>(d) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns in the real property and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and allocating the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When two or more cotenants jointly make the high bid or offer at the sale, they may receive at the closing an aggregate credit and</p>	<p>sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.</p> <p>(c) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns therein and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and apportioning the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two</p>	<p>conforming change to the new carrying costs provision, approved by the Commission, and (v) recodifying and amending language from G.S. 46-31.</p>

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<p>reduction in the amount of the total purchase price representing the total of <b>their</b> undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of <b>carrying costs or improvements of the real property under G.S. 46A-27.</b></p> <p><b>(e)</b> The clerk of the superior court shall not appoint the clerk, the assistant clerk, or the deputy clerk to make a sale of the real property.</p>	<p>or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of such cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s) of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property.</p> <p><b>§ 46-31. Clerk not to appoint self, assistant or deputy to sell real property.</b></p> <p>No clerk of the superior court shall appoint himself or his assistant or deputy to make sale of any property in any proceeding before him.</p>	
<p><b>§ 46A-76. Mediation.</b></p> <p>(a) Parties interested in the real property may agree at any time to mediation of a partition. A list of mediators certified by the Dispute Resolution Commission may be obtained from the clerk or from the Commission through the Administrative Office of the Courts.</p> <p>(b) When a partition sale is requested, the court or the clerk may order mediation before considering whether to order a sale. G.S. 7A-38.1 and G.S. 7A-38.3B apply to a</p>	<p><b>§ 46-22.1. Mediation.</b></p> <p>(a) Persons interested in the premises may agree at anytime to mediation of a partition. A list of mediators certified by the Dispute Resolution Commission may be obtained from the clerk or from the Commission through the Administrative Office of the Courts.</p>	

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mediation under this section.	(b) When a partition sale is requested, the court or the clerk may order mediation before considering whether to order a sale. The provisions of G.S. 7A-38.1 and G.S. 7A-38.3B shall apply.	
	<b>G.S. 46-23</b> is compared to G.S. 46A-78 below.	
<p><b>§ 46A-77. Partition sale of real property subject to a life estate.</b></p> <p>If the real property to be partitioned is subject to a life estate, the life tenant may join in the proceeding, and in the case of a partition sale, the interest on the value of the share of the life tenant shall be paid to the life tenant annually. In lieu of annual interest, the value of the life tenant's share shall be <b>calculated according to Article 5 of Chapter 8 of the General Statutes</b> and paid out of the proceeds to the life tenant absolutely.</p>	<p><b>§ 46-24. Life tenant as party; valuation of life estate.</b></p> <p>In all proceedings for partition of land whereon there is a life estate, the life tenant may join in the proceeding and on a sale the interest on the value of the share of the life tenant shall be received and paid to such life tenant annually; or in lieu of such annual interest, the value of such share during the probable life of such life tenant shall be ascertained and paid out of the proceeds to such life tenant absolutely.</p>	
<p><b>§ 46A-78. Partition sale of remainder or reversionary interest of real property.</b></p> <p>The existence of a life estate in real property does not bar a partition sale of the remainder or reversionary interest of the property, and for the purposes of partition, the tenants in common or joint tenants of the remainder or reversionary interest shall be deemed to possess the property as if no life estate existed. The partition shall not, however, interfere with the possession of the life tenant during the existence of the life tenant's estate.</p>	<p><b>§ 46-23. Remainder or reversion sold for partition; outstanding life estate.</b></p> <p>The existence of a life estate in any land shall not be a bar to a sale for partition of the remainder or reversion thereof, and for the purposes of partition the tenants in common or joint tenants shall be deemed <b>seized and</b> possessed as if no life estate existed. But this shall not interfere with the possession of the life tenant during the existence of his estate.</p>	
	<b>G.S. 46-24</b> is compared to G.S. 46A-77 above.	

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<p><b>§ 46A-79. Sale of standing timber; valuation of life estate.</b></p> <p>(a) When two or more persons own real property with standing timber, as tenants in common, joint tenants, or partners, one or more of the persons may seek a partition sale of the timber, separate from the real property.</p> <p>(b) If real property with standing timber is subject to a life estate, an owner of the remainder or reversionary interest, whether as a tenant in common, joint tenant, partner, or sole owner, or the life tenant may seek a partition sale of the timber, separate from the real property. The life tenant shall be made a party to the proceeding and is entitled to receive the life tenant's share of the proceeds, <b>to be calculated according to Article 5 of Chapter 8 of the General Statutes.</b></p> <p>(c) An order allowing a life tenant to sell standing timber requires a finding that the cutting of the timber is in keeping with good husbandry and that no substantial injury will be done to the remainder or reversionary interest.</p>	<p><b>§ 46-25. Sale of standing timber on partition; valuation of life estate.</b></p> <p>When two or more persons own, as tenants in common, joint tenants or <b>copartners</b>, a tract of land, either in possession, or in remainder or reversion, subject to a life estate, or where one or more persons own a remainder or reversionary interest in a tract of land, subject to a life estate, then in any such case in which there is standing timber upon any such land, a sale of said timber trees, separate from the land, may be had upon the petition of one or more of said owners, or the life tenant, for partition among the owners thereof, including the life tenant, upon such terms as the court may order, and under like proceedings as are now prescribed by law for the sale of land for partition: Provided, that when the land is subject to a life estate, the life tenant shall be made a party to the proceedings, and shall be entitled to receive his or her portion of the net proceeds of sales, to be ascertained under the mortality tables established by law: Provided further, that prior to a judgment allowing a life tenant to sell the timber there must be a finding that the cutting is in keeping with good husbandry and that no substantial injury will be done to the remainder interest.</p>	<p>According to Black's Law Dictionary, Tenth Edition, "copartner" means "partner".</p>

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<p><b>§ 46A-80. Sale of mineral interests.</b></p> <p>In a partition of the mineral interests of real property, when the court determines any of the following, the court shall order a sale of the mineral interests and allocate the proceeds according to the interests of the tenants in common or joint tenants:</p> <p>(1) It is in the best interest of the cotenants of the mineral interests to sell the interests.</p> <p>(2) Actual partition of the mineral interests would cause injury to some or all of the cotenants of the mineral interests.</p>	<p><b>§ 46-26. Sale of mineral interests on partition.</b></p> <p>In case of the partition of mineral interests, in all instances where it is made to appear to the court that it would be for the best interests of the tenants in common, or joint tenants, of such interests to have the same sold, or if actual partition of the same cannot be had without injury to some or all of such tenants (in common), then it is lawful for and the duty of the court to order a sale of such mineral interests and a division of the proceeds as the interests of the parties may appear.</p>	
<p><b>§ 46A-81. Sale of real property required for public use on cotenant's petition.</b></p> <p>When the real property of tenants in common or joint tenants is required for public purposes, one or more cotenants, or the cotenant's guardian, may file a petition verified by oath in the superior court of the county where the property or any part of the property is located, setting forth in the petition that the property is required for public purposes, and that the cotenants' interests would be promoted by a sale of the property. <b>If all proper parties are before the court and the court finds the facts alleged in the petition to be true, the court shall order a sale of the property, or as much of it as may be necessary.</b> Attorneys' fees shall be assessed in accordance with G.S. 46A-3. Mediator fees and costs of</p>	<p><b>§ 46-27. Sale of land required for public use on cotenant's petition.</b></p> <p>When the lands of joint tenants or tenants in common are required for public purposes, one or more of such tenants, or their guardian for them, may file a petition verified by oath, in the superior court of the county where the lands or any part of them lie, setting forth therein that the lands are required for public purposes, and that their interests would be promoted by a sale thereof. Whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of such lands, or so much thereof as may be necessary. The expenses, fees and costs of this proceeding shall be paid in the discretion of the court. Mediator fees and costs of mediation shall be assessed in accordance with G.S. 7A-38.3B.</p>	<p>The Commission approved this section in an earlier draft.</p>

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mediation shall be assessed in accordance with G.S. 7A-38.3B. Other costs and expenses shall be assessed in accordance with G.S. 6-21.		
	G.S. 46-28 is compared to G.S. 46A-75 above.	
<p><b>§ 46A-82. Petition for revocation of confirmation order.</b></p> <p>(a) Grounds for Revocation. – Notwithstanding G.S. 46A-75 or any other provision of law, within 15 days of entry of the order confirming the partition sale of real property, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:</p> <p>(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.</p> <p>(2) In the case of any party to the partition proceeding, any of the following:</p> <p>a. Notice of the partition was not served on the petitioner for revocation as required by G.S. 1A-1, Rule 4.</p> <p>b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46A-75(c).</p>	<p><b>§ 46-28.1. Petition for revocation of confirmation order.</b></p> <p>(a) Notwithstanding G.S. 46-28 or any other provision of law, within 15 days of entry of the order confirming the partition sale or real property, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:</p> <p>(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.</p> <p>(2) In the case of any party to the partition proceeding:</p> <p>a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or</p> <p>b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or</p>	

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<p>c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.</p> <p>In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.</p> <p>(b) Service; Notice of Hearing. – The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under G.S. 1A-1, Rule 5, and shall serve the officer or person designated to make the sale under G.S. 1A-1, Rule 4(j). The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make the sale, and all parties required to be served under G.S. 1A-1, Rule 5.</p> <p>(c) Petition by Purchaser. – In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence all of the following, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer:</p>		<p>c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.</p> <p>In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.</p> <p>(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.</p> <p>(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:</p> <p>(1) A lien remains unsatisfied on the property to be conveyed; and</p> <p>(2) The purchaser has not agreed in writing to assume the lien; and</p>	

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<div><div><div>(1)A lien remains unsatisfied on the property to be conveyed.</div><div>(2)The purchaser has not agreed in writing to assume the lien.</div><div>(3)The lien will not be satisfied out of the proceeds of the sale.</div><div>(4)The existence of the lien was not disclosed in the notice of sale of the property.</div></div><div><p>The order of the court in revoking an order of confirmation under this section shall not be introduced in any other proceeding to establish or deny the existence of a lien.</p><p>(d) Petition by Party. – In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that the petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.</p><p>(e) Petition Based on Inadequate Price. – In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared</p></div></div>	<div><div><div>(3)The lien will not be satisfied out of the proceeds of the sale; and</div><div>(4)The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.</div></div><div><p>The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.</p><p>(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.</p><p>(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the</p></div></div>	

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<p>in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.</p> <p>(f) Effect of Notice. – A petitioner for revocation shall not prevail under sub-subdivisions (a)(2)a. or b. of this section, if the petitioner received notice of the sale or resale in accordance with G.S. 46A-75(c).</p> <p>(g) Resale. – If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under G.S. 46A-75.</p> <p>(h) Order Becoming Final; Appeal. – An order confirming the partition sale of real property becomes final and effective 15 days after entry of the order of confirmation</p>	<p>Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.</p> <p>(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes.</p> <p>(f) An order confirming the partition sale of real property becomes final and effective 15 days after entry of the order of confirmation or when the clerk denies a petition for revocation, whichever occurs later. A party may appeal an order confirming the partition of sale of real property within 10 days of the order becoming final and effective.</p>	<p>Staff has received a report that in partition proceedings, appraisers are often paid several months after the appraisal; this practice can dissuade appraisers from participating in future partition proceedings.</p> <p>Subsection (f) is carried forward from the last sentence of G.S. 46-28(b), which provides:</p> <p>"If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b."</p>

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or when the clerk denies a petition for revocation, whichever occurs later. A party may appeal an order confirming the partition sale of real property within 10 days of the order becoming final and effective.		
<p><b>§ 46A-83. Purchase of property.</b></p> <p>(a) After the order of confirmation becomes final and effective, the successful bidder may immediately purchase the property.</p> <p>(b) The deed of the officer or person designated to make the sale shall convey to the purchaser such title and estate in the property as the cotenants and all other parties to the proceeding had in the property.</p> <p>(c) At the time that the order of confirmation becomes final, the court shall secure to each cotenant the cotenant's ratable share in severalty of the proceeds of sale.</p>	<p><b>§ 46-28.2. When bidder may purchase.</b></p> <p>After the order of confirmation becomes final and effective, the successful bidder may immediately purchase the property.</p> <p><b>§ 46-30. Deed to purchaser; effect of deed.</b></p> <p>The deed of the officer or person designated to make such sale shall convey to the purchaser such title and estate in the property as the tenants in common, or joint tenants, and all other parties to the proceeding had therein.</p> <p><b>§ 46-33. Shares in proceeds to cotenants secured.</b></p> <p>At the time that the order of confirmation becomes final, the court shall secure to each tenant in common, or joint tenant, his ratable share in severalty of the proceeds of sale.</p>	<p><i>Washburn v. Washburn</i>, 234 N.C. 370, 67 S.E.2d 264 (1951).</p>
	<p><b>G.S. 46-29</b> was repealed by Session Laws 1949, c. 719, s. 2.</p> <p><b>G.S. 46-31</b> is compared to G.S. 46A-75(e) above.</p> <p><b>G.S. 46-32</b> was repealed by Session Laws 1949, c. 719, s. 2.</p>	

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<p><b>§ 46A-84. Sale proceeds belonging to certain parties.</b></p> <p>(a) Minor; Incompetent Person. – When real property is sold under this Chapter and a party to the proceeding is a minor or incompetent person who has a guardian of the estate [or general guardian], the court shall order that the party's share of the proceeds be disbursed to the guardian.</p> <p>If the party does not have a guardian of the estate [or general guardian], the court shall do any of the following:</p> <p>(1) For proceeds up to the allowable amounts in G.S. 7A-111, administer and disburse the proceedings pursuant to that section.</p> <p>(2) Appoint a guardian of the estate [or general guardian] under Chapter 35A of the General Statutes and order that the proceeds be disbursed to the guardian.</p> <p>(3) Disburse the proceeds to a trust created by the court under G.S. 36C-4-401.2.</p> <p>(b) Certain Other Parties. – When a sale is made under this Chapter, the court shall invest or deposit under G.S. 7A-112 and G.S. 7A-112.1 proceeds belonging to the following parties:</p>	<p><b>§ 46-34. Shares to persons unknown or not sui juris secured.</b></p> <p>When a sale is made under this Chapter, and any party to the proceedings be an infant, non compos mentis, imprisoned, or <b>beyond the limits of the State</b>, or when the name of any tenant in common is not known, it is the duty of the court to decree the share of such party, in the proceeds of sale, to be so invested or settled that the same may be secured to such party or his real representative.</p>	<p>We need to talk to clerks about this section.</p> <p>The highlighted language was added by the original 1869 statute. <i>See</i> 1868-9, c. 122, s. 17.</p>

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<p>(1) A party who is imprisoned, if the proceeds cannot be disbursed to, or at the direction of, the party.</p> <p>(2) An unknown or unlocatable cotenant.</p> <p>A party may seek disbursement of these proceeds by filing a motion in the proceeding. If the party shows that the proceeds belong to the party, the court shall disburse the proceeds to the party.</p>		
	<b>G.S. 46-35 through G.S. 46-41</b> was repealed by Session Laws 1943, c. 543.	
<p>Article 3.</p> <p>Partition of Personal Property.</p> <p><b>§ 46A-100. Personal property may be partitioned.</b></p> <p>A tenant in common or joint tenant of personal property may file a petition in superior court to partition the property.</p>	<p><b>§ 46-42. Personal property may be partitioned; commissioners appointed.</b></p> <p>When any persons entitled as tenants in common, or joint tenants, of personal property desire to have a division of the same, they, or either of them, may file a petition in the superior court for that purpose; and the court, if it think the petitioners entitled to relief, shall appoint three disinterested commissioners, who, being first duly sworn, shall proceed within 20 days after notice of their appointment to divide such property as nearly equally as possible among the tenants in common, or joint tenants.</p>	<p>Much of the language deleted in this section is carried forward in the next section.</p>
<p><b>§ 46A-101. Commissioners appointed; report; confirmation; impeachment.</b></p> <p>(a) Appointment. – If the court determines that the petitioner is entitled to relief,</p>		<p>Some of the amendments in this section are taken from the Partition of Property Third Draft</p>

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<p>the court shall appoint three disinterested commissioners, who, being first duly sworn, shall proceed within 20 days after notice of their appointment to partition the personal property in shares that are as nearly proportionate in value as possible to the interests of the cotenants.</p> <p>(b) Report. – The commissioners shall file a written report of their proceedings in the court, signed by any two of them, within five days after the actual partition.</p> <p>(c) Confirmation; Impeachment. – If no party files an exception to the commissioners' report within 10 days of its filing, the court shall confirm the report. After confirmation of the report, a party may by petition in the cause impeach the proceeding for mistake, fraud, or collusion. Impeachment, however, does not affect an innocent purchaser for full value and without notice.</p>	<p><b>§ 46-43. Report of commissioners.</b></p> <p>The commissioners shall report their proceedings under the hands of any two of them, and shall file their report in the office of the clerk of the superior court within five days after the partition was made.</p> <p><b>§ 46-43.1. Confirmation; impeachment.</b></p> <p>If no exception to the report of the commissioners making partition is filed within 10 days the report shall be confirmed. Any party, after confirmation, shall be allowed to impeach the proceeding for mistake, fraud or collusion, by petition in the cause, but innocent purchasers for full value and without notice shall not be affected thereby.</p>	<p>(DN 13-2 Partition of Property).</p>
<p><b>§ 46A-102. Partition sale of personal property.</b></p> <p>(a) If the court determines that an actual partition of personal property would injure some of the parties and that a partition sale is necessary, the court shall order a sale to be made as provided in Article 29A of Chapter 1 of the General Statutes. In a partition sale, the court is not required to appoint more than one commissioner.</p> <p>(b) G.S. 46A-84 applies to sale proceeds under this section.</p>	<p><b>§ 46-44. Sale of personal property on partition.</b></p> <p>If a division of personal property owned by any persons as tenants in common, or joint tenants, cannot be had without injury to some of the parties interested, and a sale thereof is deemed necessary, the court shall order a sale to be made as provided in Article 29A of Chapter 1 of the General Statutes.</p>	<p>The last sentence of this section was approved by the Commission in the Partition Sale/Clarify Number of Comm'rs Second Draft.</p>

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	G.S. 46-45 through G.S. 46-46 was repealed by Session Laws 1949, c. 719, s. 2.	
SECTION 1.(#) This section becomes effective [October 1, 2019]. G.S. 46A-22, as enacted by subsection (#) of this section, applies to judgments entered on or after that date. G.S. 46A-59, as enacted by subsection (#) of this section, applies to applications for orders for possession filed on or after that date. The rest of this section applies to partition proceedings commenced on or after that date.		This draft deviates from the Partition Sale/Clarify Number of Comm'rs Second Draft, which was approved by the Commission, by not providing any retroactive application.